IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13710 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 No

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V.J.MORIA - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MS REETA CHANDARANA AGP for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 16/09/2005

CAV JUDGMENT

1. This is a glaring case of abuse of the Court's respect for the principles of natural justice an the process of Court. Invoking Articles 14, 16 and

226 of the Constitution, the petitioner has sought to challenge the order dated 6.7.2002 imposing monthly cut of Rs.700/- for ten years from his pension; but in reality sought to reopen scrutiny of the disciplinary action taken against him after disposal of two of his earlier petitions on the same subject-matter.

2. The relevant facts of the case, in brief, are that the petitioner, an Additional Collector under the State Government, was chargesheeted on 7.8.1999 for the alleged acts of misconduct committed during the years 1996 and 1997. The departmental enquiry concluded on 11.4.2001 with the findings of the Enquiry Officer that serious charges of drawing double travelling and daily allowances and negligence in the discharge of duties were proved. Since he was retiring on 30.4.2001, he was called upon to make his representation in respect of the enquiry report within four days by 21.4.2001. Even before the notice dated 16.4.2001 to that effect was served on 26.4.2001, the petitioner rushed to this Court by way

Special Civil Application No.2818 of 2001 and, under the interim order dated 20.4.2001, submitted his interim reply dated 24.2.2001. During the course of enquiry and thereafter, he kept alive his demands of and grievances about various documents. Even after the documents being supplied, he kept alive the grievances by writing several letters making vague demands and allegations. Even while submitting his final detailed reply dated 1.5.2001 and admitting several acts of misconduct as '*just slip of pen' and 'errors'* he kept alive the grievance of non-supply of all the documents demanded by him. These post-enquiry proceedings went on even as he retired on 30.4.201 and he unconditionally withdrew the pending petition, Special Civil Application No.2818 of 2001, on 11.9.2001.

2.1 Then the petitioner appears to have preferred an appeal from the impugned order of penalty dated 6.7.2002 and made a grievance before the High Court that his appeal was not being heard. In the petition in that regard, being Special Civil

Application No.14330 of 2004, after more than two years of preferring the appeal and on the basis of the grievance that it was not heard, he pleaded that his appeal was capable of being treated as an application for review under Rule 24 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 and obtained a direction on 29.10.2004 that his application shall be considered and decided as expeditiously as possible and preferably within three months, whereas in reality, his appeal was decided on 15.1.2003 and a copy of the order was served by Registered Post A/D at his address.

2.2 According to the averments made in the petition, the petitioner did not come to know about disposal of the review application. It is alleged that the impugned order of penalty was made without consideration of the representations dated 1.5.2001 and 24.4.2001 insofar as the interim representation dated 24.4.2001 contained 15 typed pages and the representation dated 1.5.2001 contained 20 pages; but there is no decision in the impugned order about any

of the various points raised by the petitioner. It is also averred that the petitioner has been denied reasonable opportunity to defend at the departmental enquiry as he was not supplied with copies of the relevant and important documents at the proper time and the documents which were received vide letter dated 24.4.2001 were supplied after the departmental enquiry was completed and enquiry report was submitted. It is also contended in the petition that the penalty imposed upon the petitioner is disproportionate, excessive and harsh in view of the charges proved against him.

3. With the above background of facts, it was argued for the petitioner that the impugned order of penalty was bad in law on the grounds that principles of natural justice were violated insofar as the documents were not supplied in time, all the points raised in his reply were not considered and the punishment was excessive. In support of his arguments, the learned counsel for the petitioner relied upon the judgment of this Court dated

10.9.2003 in Special Civil Application No.499 of 1999 and the order dated 29.1.2005 of the Division Bench of this Court in Letters Patent Appeal No.50 of 2005 upholding the former judgment. He also relied upon the guidelines issued by the Government in 1993 laying down that the disciplinary authority must give reasons for negating each and every point in the representation of the delinquent.

3.1 On the basis of a Draft Amendment submitted on 13.7.2005, it was also argued that, under Rule 10 (4) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, it was obligatory to take into consideration the advice of the Gujarat Public Service Commission before making an order imposing penalty. Even as such advice was received by the respondent from the Commission and was taken into consideration, a copy of such advise was not supplied to the petitioner before passing the order of penalty though it was supplied with the order of penalty. According to the ratio of the judgment dated 8.12.2004 in Letters Patent Appeal No.15316 of 2004

of the Division Bench of this Court, the impugned order was vitiated for non-supply of a copy of the advice of the G.P.S.C. before passing the order of penalty, according to the submission.

3.2 In order to cross the hurdle of delay of three years in approaching the Court, the learned counsel for the petitioner relied upon the judgment of this Court in **KIRTIKUMAR D. VYAS v. STATE & ANR. [1982 (2) G.L.R.79],** and in **Letters Patent Appeal No.347 of 2000** etc. as also the judgment of the Supreme Court in **STATE OF MADHYA PARADESH v. BAHAILAL BHAI & ORS. [AIR 1964 SC 1006]** and **HINDUSTAN PETROLEUM CORPORATIOIN LTD. v. DOLLY DAS [(1999) 4 SCC 450].**

4. It must be noted that, in the facts of the present case, the petitioner had already approached this Court by way of Special Civil Application No.2818 of 2001 praying to set aside the entire departmental enquiry held by the respondent, report of the enquiry officer dated 11.4.2001 as well as

the notice dated 16.4.2001 on all available grounds. On calling upon the record of that petition, it was found that the petitioner had elaborately agitated 15 grounds in that petition and relied upon the same set of letters demanding the documents. By filing an affidavit-in-reply, it was stated on oath by the Deputy Secretary, Panchayats Rural Housing & Rural Development Department of the Government that it was very clear that the petitioner had adopted dilatory tactics for avoiding major punishment before his retirement; and that after the acts of misconduct being documentarily proved, he was trying to escape from major punishment before superannuation. After that affidavit dated 26.4.2001 and the due date of superannuation on 30.4.2001, that petition was unconditionally withdrawn as not pressed on 11.9.2001. The subsequent appeal and decision thereon dated 15.1.2003 have not been challenged but claiming ignorance thereof, the second petition appears to have been filed after more than two years only with a view to ensuring reconsideration of the appeal in the form of review and renewing the cause

of action. This is done in the face of the clarification that his appeal was decided on 15.1.2003 and the decision was not only communicated by a Registered A/D letter but receipt thereof was acknowledged by a person, namely “Sabera” on behalf of the petitioner. The petitioner has chosen not to make any clarification or averment as to who the person called “Sabera” is who could have received the post at his address and preferred to only state that *“since the petitioner did not come to know about disposal of the review application he filed Special Civil Application No.14330 of 2004.....”.* Thus, there is a clear attempt at re-agitating all the issues that were dropped while withdrawing the earlier Special Civil Application No.2818 of 2001 and renewing the cause of action by claiming ignorance of the order dated 15.1.2003.

5. In the above facts and circumstances, the delay in filing of the present petition is found to be not only deliberate but mischievous. Therefore, the salutary principles enunciated in the judgments

relied upon for the petitioner would not apply in the facts of the present case. Besides that, the High Court conferred with the extraordinary writ jurisdiction must hold its hands in entertaining the petition wherein the petitioner is apparently abusing the process of Court and approaching with unclean hands. The above record of facts clearly shows that the petitioner has successfully evaded the order of penalty before retirement and repeatedly sought to canvass the same arguments of violation of principles of natural justice. He also suppressed the material fact of having agitated all the issues in the earlier petitions and the fact of disposal of his appeal way back in January, 2003. Instead of approaching the Court immediately thereafter, he has sought to obtain another order on the same appeal by treatment of the same as an application for review through the order dated 29.10.2004 in another petition, being Special Civil Application No.14330 of 2004.

6. In the facts and for the reasons discussed hereinabove, the petition of the petitioner does not

deserve to be entertained and requires to be rejected with costs without dealing with the other contentions on merit. Accordingly, the petition is rejected with costs of Rs.10,000/- (rupees ten thousand) which shall be paid by the petitioner to the respondent within one month. Notice is discharged. Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)